Ng Boon Hock v Penguasa, Tempat Tahanan Perlindungan Kamunting, Taiping & Ors

HIGH COURT (KUALA LUMPUR) — SUIT NO R2-22-2 OF 1995
AZMEL J
13 OCTOBER 1997

Preventive Detention *— Detention order — Detention under Internal Security Act — Allegation of unlawful detention and unlawful restriction against Minister — Whether plaintiff can take action to court for judicial review — No evidence that the plaintiff was still being detained or restricted by the Minister — Whether proper for plaintiff to bring an action without at the same time applying for an order of mandamus for his release if his orders of detention and order of restriction were unlawful — Whether plaintiff could claim damages — Internal Security Act 1960 s 8*

On 17 January 1992, the Timbalan Menteri Dalam Negeri ('the second defendant') issued an order under s 8(1) of the Internal Security Act 1960 ('the Act') ordering that the plaintiff be detained at Tempat Tahanan Perlindungan, Kamunting, Taiping for a period of two years with effect from 18 January 1992. On 14 January 1994, the second defendant issued another order under s 8(7) of the Act ordering that the plaintiff's detention be extended for a further period of two years at the same place. However, on 25 July 1994, the second defendant issued an order under s 10 of the Act, suspending the earlier detention order against the plaintiff with effect from 28 July 1994, subject to the condition that the plaintiff was restricted to the police district of Melaka Tengah. As a result of another order issued under s 8(8) of the Act, the area was subsequently changed to the police district of Ulu Langat, Selangor. The plaintiff claimed that the orders of detention and restrictions issued against him by the second defendant were unlawful and in consequence to that, he claimed damages for unlawful detention and unlawful restriction.

Held, dismissing the plaintiff's claim:

The only provision under which a person can institute an action in court for any offence under the Act is s 8B. The term 'judicial review', defined in s 8C of the Act, encompasses almost every action that can be taken to court. Reading s 8B together with s 8C of the Act, the only action anyone can take to court for any offence under the Act is 'in regard to any question on compliance with any procedural requirement in this Act governing such act or decision'. Therefore, one can only challenge the act done or decision made by the Yang di-Pertuan Agong or the Minister on a question of non-compliance with any procedural requirement governing such act or decision. The effect of such an act or decision of non-compliance will render a detention order under s 8(1) unlawful with the consequence that the person detained under such unlawful order be released by the court. Similarly, an order of restriction under s 8(8) and an order of

suspension under s 10 of the Act may be held to be unlawful with the same consequence.

For any person to bring any action to court under the Act, it is a condition precedent that the unlawful act alleged to have been committed must still continue to exist. The plaintiff must prove to the court that he is still being unlawfully detained or that he is still under unlawful restriction. There was no evidence here that the plaintiff was still being detained or restricted by the defendants. From the exhibits produced, the plaintiff would have been released on 17 February 1996. Without any evidence stating that the plaintiff was still being detained or restricted, the court was unable to give the order under s 8B. It was therefore improper for the plaintiff to bring this action without at the same time applying for an order of mandamus whereby the second defendant would be ordered to release the plaintiff if his orders of detention and order of restriction were found by the court to be unlawful. The plaintiff's claim was therefore dismissed on this ground (see pp 178C–I and 179A–F); *Inspector-General of Police & Anor v Teh Guan Teik* Civil Appeal No N–01–7 of 1994 followed.

Obiter:

It is clearly the intention of the legislators in passing the Act to restrict the jurisdiction of the court for reasons best known to them to ensure that the security of the country can be maintained. However, Parliament did not exclude the powers of the court completely. The only power that is left for the court is 'in regard to any question on compliance with any procedural requirement in this Act governing such act or decision'. Section 8B of the Act cannot be construed to include the power of the court to award damages for any act or decision done by the Yang di-Pertuan Agong and the Minister. Claims which any person can bring to court under s 8B must be specifically mentioned in the Act, and claims for damages have not been specifically mentioned as an item which the court can award under s 8B of the Act (see pp 179G–I and 180A).

[Bahasa Malaysia summary

Pada 17 Januari 1992, Timbalan Menteri Dalam Negeri ('defendan kedua') telah mengeluarkan satu perintah di bawah s 8(1) Akta Keselamatan Dalam Negeri 1960 ('Akta tersebut') yang memerintahkan supaya plaintif ditahan di Tempat Tahanan Perlindungan, Kamunting, Taiping untuk tempoh selama dua tahun mulai 18 Januari 1992. Pada 14 Januari 1994, defendan kedua mengeluarkan satu lagi perintah di bawah s 8(7) Akta tersebut memerintahkan supaya tahanan plaintif dilanjutkan untuk dua tahun lagi di tempat yang sama. Namun demikian, pada 25 Julai 1994, defendan kedua mengeluarkan satu perintah di bawah s 10 Akta tersebut, menggantung perintah tahanan yang terdahulu terhadap plaintif mulai 28 Julai 1994, tertakluk kepada syarat bahawa plaintif

disekat kepada daerah polis Melaka Tengah. Akibat satu lagi perintah yang dikeluarkan di bawah s 8(8) Akta tersebut, kawasan itu kemudiannya ditukar kepada daerah polis Ulu Langat, Selangor. Plaintif menuntut bahawa perintah-perintah tahanan dan sekatan yang dikeluarkan terhadapnya oleh defendan kedua menyalahi undang-undang dan akibatnya, dia menuntut ganti rugi untuk tahanan menyalahi undang-undang dan sekatan menyalahi undang-undang.

Diputuskan, menolak tuntutan plaintif:

Satu-satunya peruntukan di bawah mana seseorang boleh memulakan tindakan di mahkamah untuk mana-mana kesalahan di bawah Akta tersebut adalah s 8B. Terma 'judicial review', yang ditakrifkan dalam s 8C Akta tersebut, meliputi hampir setiap tindakan yang boleh dibawa ke mahkamah. Dengan membaca s 8B bersama s 8C Akta tersebut, satu-satunya tindakan yang sesiapa boleh bawa ke mahkamah untuk mana-mana kesalahan di bawah Akta tersebut ialah 'in regard to any question on compliance with any procedural requirement in this Act governing such act or decision'. Maka, seseorang hanya boleh mencabar perbuatan yang dilakukan atau keputusan yang diambil oleh Yang di-Pertuan Agong atau Menteri atas persoalan ketidakpatuhan mana-mana keperluan prosedur yang menguasai perbuatan atau keputusan demikian. Kesan perbuatan atau keputusan ketidakpatuhan demikian akan menyebabkan satu perintah tahanan di bawah s 8(1) menjadi tidak sah dengan akibat bahawa orang yang ditahan di bawah perintah yang tidak sah sebegitu dibebaskan oleh mahkamah. Begitu juga, satu perintah sekatan di bawah s 8(8) dan satu perintah penggantungan di bawah s 10 Akta tersebut boleh diputuskan tidak sah dengan akibat yang sama.

Bagi sesiapa yang membawa apa-apa tindakan di mahkamah di bawah Akta tersebut, ia merupakan suatu syarat terdahulu bahawa perbuatan tidak sah yang dikatakan telah dilakukan mestilah masih terus wujud. Plaintif mesti membuktikan kepada mahkamah bahawa dia masih ditahan secara tidak sah atau bahawa dia masih berada di bawah sekatan yang tidak sah. Tiada keterangan di sini bahawa plaintif masih ditahan atau disekat oleh defendan-defendan. Daripada ekshibit-ekshibit yang dikemukakan, plaintif telah dibebaskan pada 17 Februari 1996. Tanpa sebarang keterangan yang menyatakan bahawa plaintif masih ditahan atau disekat, mahkamah tidak dapat memberi perintah di bawah s 8B. Maka adalah tidak wajar untuk plaintif membawa tindakan ini tanpa memohon untuk perintah mandamus pada masa yang sama yang mana defendan kedua akan diperintahkan membebaskan plaintif sekiranya perintah tahanan dan perintah sekatan ke atasnya didapati tidak sah oleh mahkamah. Oleh itu, tuntutan plaintif ditolak atas alasan ini (lihat ms 178C–I dan 179A–F); *Inspector-General of Police & Anor v Teh Guan Teik* Rayuan Sivil No N–01–7 tahun 1994 diikut.

Obiter:

Adalah jelas hasrat pembuat undang-undang dalam meluluskan Akta tersebut adalah untuk menyekat bidang kuasa mahkamah atas sebab yang paling difahami mereka bagi memastikan bahawa keselamatan negara boleh dikekalkan. Walau bagaimanapun, Parlimen tidak mengecualikan kuasa-kuasa mahkamah sama sekali. Satu-satunya kuasa yang dibiarkan untuk mahkamah adalah 'in regard to any question on compliance with any procedural requirement in this Act governing such act or decision'. Seksyen 8B Akta tersebut tidak boleh ditafsirkan untuk termasuk kuasa mahkamah untuk mengawardkan ganti rugi bagi mana-mana perbuatan atau keputusan yang dilakukan oleh Yang di-Pertuan Agong dan Menteri. Tuntutan-tuntutan yang boleh dibawa oleh sesiapa ke mahkamah di bawah s 8B mestilah disebut secara spesifik dalam Akta tersebut, dan tuntutan-tuntutan untuk ganti rugi tidak disebut secara spesifik sebagai satu butir yang boleh diawardkan di bawah s 8B Akta tersebut (lihat ms 179G–I dan 180A).]

Notes

For a case on detention under Internal Security Act, see 10 *Mallal's Digest* (4th Ed,1996 Reissue) para 1140.

Case referred to

Inspector-General of Police & Anor v Teh Guan Teik Civil Appeal No N–01–7 of 1994 (folld)

Legislation referred to

Internal Security Act 1960 ss 8(1), (7), (8), 8B, 8C, 10

V Somas (*Karpal Singh & Co*) for the plaintiff.
Al-Baishah bte Abdul Manan (Senior Federal Counsel) for the defendants.

Azmel J: The brief facts of this case are as follows. On 17 January 1992, the Timbalan Menteri Dalam Negeri ('the second defendant') issued an order under s 8(1) of the Internal Security Act 1960 ('the said Act') ordering that the plaintiff be detained at Tempat Tahanan Perlindungan, Kamunting, Taiping for a period of two years with effect from 18 January 1992. Subsequently on 14 January 1994, the second defendant issued another order under s 8(7) of the said Act ordering that the plaintiff's detention be extended for a further period of two years at the same place. However, on 25 July 1994, the second defendant issued an order under s 10 of the said Act, suspending the earlier detention order against the plaintiff with effect from 28 July 1994 subject to certain restrictions and conditions; one of which was:

> That the plaintiff is required to stay within the area of Police District of Melaka Tengah and shall not leave or get out of the area without the prior written permission of Ketua Polis Daerah Melaka Tengah and he shall not

leave the State of Melaka without the prior written permission of the Ketua Polis Melaka. A

On 3 November 1994, the second defendant issued another order under s 8(8) of the said Act whereby the area in which the plaintiff was restricted to was changed from Daerah Polis Melaka Tengah to Daerah Polis Ulu Langat, Selangor. B

The plaintiff claimed that the orders of detention and restrictions issued against him by the second defendant were unlawful and in consequence to that, he claimed damages for unlawful detention and unlawful restriction.

The only provision under which a person can institute an action in court for any offence under the said Act is s 8B. It reads as follows: C

Judicial review of act or decision of Yang Di-Pertuan Agong and Minister

(1) There shall be no judicial review in any court of, and no court shall have or exericse any jurisdiction in respect of, any act done or decision made by the Yang di-Pertuan Agong or the Minister in the exercise of their discretionary power in accordance with this Act, save in regard to any question on compliance with any procedural requirement in this Act governing such act or decision. D

(2) The exception in regard to any question on compliance with any procedural requirement in subsection (1) shall not apply where the grounds are as described in section 8A. E

The term 'judicial review' as mentioned in s 8B is defined in s 8C of the said Act. It reads as follows:

Interpretation of 'judicial review'

In this Act, 'judicial review' includes proceedings instituted by way of — F

(a) an application for any of the prerogative orders of mandamus, prohibition and certiorari;

(b) an application for a declaration or an injunction;

(c) a writ of habeas corpus; and

(d) any other suit, action or other legal proceedings relating to or arising out of any act done or decision made by the Yang di-Pertuan Agong or the Minister in accordance with this Act. G

As can be clearly seen, the term 'judicial review' as defined in s 8C encompasses almost every action that can be taken to court. The usage of the word 'includes' clearly indicates that the list of items of 'judicial review' in the said section is not exhaustive. Hence, reading s 8B together with s 8C of the said Act, the only action anyone can take to court for any offence under the said Act is 'in regard to any question on compliance with any procedural requirement in this Act governing such act or decision'. This means that one can only challenge the act done or decision made by the Yang di-Pertuan Agong or the Minister on a question of non-compliance with any procedural requirement governing such act or decision. And such claim should not exceed more than that. That being the case, the effect of H I

A an act or decision of the Yang di-Pertuan Agong or Minister not complying with the procedural requirement will render a detention order under s 8(1) unlawful with the consequence that the person detained under such unlawful order be released by the court. Similarly, an order of restriction under s 8(8) and also an order of suspension under s 10 of the said Act be held to be unlawful by the court with the same consequence given to the B aggrieved party. But that is about the only relief that any court can order under s 8B of the said Act. And it is very important to bear in mind that for any person to bring any action to court under the said Act, it is a condition precedent that the unlawful act alleged to have been committed must still continue to exist. In other words, at the time of the hearing, the C plaintiff must prove to the court that he is still being unlawfully detained or that he is still under unlawful restriction. The court could not and should not make an order if the alleged act has ceased to exist or the plaintiff has been released from the detention or restriction.

On the facts of this case, there is no evidence that the plaintiff was D still being detained or restricted by the defendants. In any case, from the exhibits produced, the plaintiff would have been released on 17 February 1996. Without any evidence stating that the plaintiff is still being detained or restricted, the court is unable to give the order under s 8B. On this issue, I agree with the submission of the senior federal counsel that it is improper for the plaintiff to bring this action without at the same time E applying for an order of mandamus whereby the second defendant would be ordered to release the plaintiff if his orders of detention and order of restriction are found by the court to be unlawful. The decision of the Court of Appeal Malaysia in the case of *Inspector-General of Police & Anor v Teh Guan Teik* Civil Appeal No N–01–7 of 1994 is relevant and followed. F On this ground alone, the plaintiff's claim should be dismissed.

As can be seen from the claims of the plaintiff, the crux of his claim is for damages for unlawful detention and unlawful restriction. In considering this issue, I need to refer back to the provision of s 8B of the said Act. It is clearly the intention of the legislators in passing this Act to restrict the jurisdiction of the court for reasons best known to them to G ensure that the security of this country can be maintained. However, Parliament did not exclude the powers of the court completely. And the only power that is left for the court to hear is 'in regard to any question on compliance with any procedural requirement in this Act governing such act or decision'. In my view, reading that clause and being aware of the H intention of Parliament in enacting the said Act, it cannot by any stretch of imagination, be construed to include the power of the court to award damages for any act or decision done by the Yang di-Pertuan Agong and the Minister. As I have said, s 8B must be read together with s 8C where the term 'judicial review' is defined. The term 'any other suit, action or other legal proceedings' appearing in para (d) of s 8C should also include I claims for damages because the list of 'judicial review' as stated in s 8C is not meant to be exhaustive. That being the case, claims which any person can bring to court under s 8B must be specifically mentioned in the said

Act. Unless specifically mentioned, the court does not have the jurisdiction to hear. Claims for damages have not been specifically mentioned as an item which the court can award under s 8B of the said Act.

For the reason as I have stated above I dismissed the plaintiff's claim with cost.

Plaintiff's claim dismissed.

Reported by David Lai